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CENTRAL ADMINISTRATIVE TRIBUNAL,  
Cuttack Bench, Cuttack

O.A.NO.569/95

12.5.1997

Abhimanyu Satapathy ....

Applicant

Vrs.

Union of India and others....

Respondents

(FOR INSTRUCTION)

- 1) Whether it be referred to the Reporters or not? Yes.
- 2) Whether it be circulated to all the Benches of the NO Central Administrative Tribunal or not?

(SMT. LAKSHMI SWAMINATHAN )  
MEMBER (JUDICIAL)

Somnath Som  
(S. SOM)  
VICE-CHAIRMAN 12.5.97

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

Original Application No. 569 of 1995  
Cuttack, this the 12th day of May, 1997

**C O R A M:**

**HONOURABLE SRI S.SOM, VICE-CHAIRMAN  
AND  
HONOURABLE SMT.L.SWAMINATHAN, MEMBER (JUDICIAL)**

**Abhimanyu Satapathy,**  
aged about 41 years,  
s/o late Khetrabasi Satapathy,  
Plot No. 3323(a), At-Kharakhia baidyanath,  
Old Town, Bhubaneswar-2,  
Now working as L.D.C. in the  
office of Assistant Superintending  
Archaeological Chemist,  
Eastern Zone, Bhubaneswar-2,  
Dist. Khurda

..... Applicant

**-versus-**

1. **Union of India,**  
represented through the Secretary,  
Ministry of Human Resources and E.D.,  
Shastri Bhawan,  
New Delhi.
2. **Director-General,**  
Archaeological Survey of India,  
Janapath, New Delhi-11.
3. **Superintending Archaeologist,**  
For Museums & Archaeological Survey of India,  
Museum Branch,  
Indian Museum,  
Jawaharlal Nehru Road,  
Calcutta-17,  
West Bengal.
4. **S.K. Bhatia, U.D.C.,**  
Office of the Superintending Archaeologist,  
Archaeological Survey of India,  
SCO-2909-10, Sec. 22C,  
Chandigarh Circle, Chandigarh.
5. **M.M. Biniwale, LDC,**  
Office of Superintending Archaeologist,  
Archaeological Survey of India,  
Vadodara Circle, Madhav Bauh,  
Makarpura Road,  
Vadodara, Gujarat.

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6. Suresha Baboo, LDC,  
Office of Superintending,  
Archaeological Survey of India,  
Agra Circle, Tajmahal Agra,  
22, The Mall, Uttar Pradesh.

7. Smt. Vijaya Raina, LDC,  
Office of Superintending Archaeologist,  
Archaeological Survey of India,  
Srinagar Circle,  
Mintoo Building, Raj Bagh,  
Jammu, Jammu & Kashmir.

8. Smt. V. Mirabai, LDC,  
Office of the Archaeological Chemist,  
Archaeological Survey of India,  
Fort, St. George,  
Madras-600 009.

9. H.C. Ravi, LDC,  
Office of Superintending Archaeologist,  
Archaeological Survey of India,  
22, The Mall, Agra Circle,  
Taj Mahal, Agra,  
Uttar Pradesh

10. Sadvir Singh Bhaiya, LDC,  
Office of Superintending Archaeologist,  
Archaeological Survey of India,  
Delhi Circle,  
Safdarjang, New Delhi-110 003.

11. S.R. Prasad, LDC,  
Office of the Superintending Archaeologist,  
Archaeological Survey of India,  
No. 364, 16th Main Jayanagar,  
Bangalore Ricol,  
Bangalore, Karnataka.

12. Tarachand, L.D.C.,  
Office of the Superintending Archaeologist,  
Archaeological Survey of India,  
Agra Circle, Taj Mahal,  
22, The Mall, Agra,  
Uttar Pradesh-282 001.

13. Ashwani Pandey, LDC,  
Office of the Superintending Archaeologist,  
Archaeological Survey of India,  
Excavation Branch,  
Purana Quilla,  
New Delhi

... Respondents

Advocates for applicant - M/s Bibekananda Nayak & A.K. Dora.

Advocate for respondents - Mr. U.B. Mohapatra, ASC.

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O R D E R

S.SOM, VICE-CHAIRMAN

In this petition under Section 19 of the Administrative Tribunals Act, 1985, Abhimanyu Satapathy, working as Lower Division Clerk in the office of Assistant Superintending Archaeological Chemist Eastern Zone, Bhubaneswar, has prayed for refixing his seniority "treating the date of appointment in the post of U.D.C. as 17.10.1977 or the date when the immediate junior got promotion and all consequential service benefits".

2. The facts of this case as they appear from the petition are that the applicant was initially appointed as a Group 'D' employee in the Archaeological Survey of India and joined at Konark. He passed the departmental competitive examination and was promoted to the post of Lower Division Clerk in the office order dated 17.10.1977 (Annexure-1). He was posted to Museum Branch, Calcutta. In this office order the applicant's name has been shown against serial no.5 and the name of one Chota Lal Yadav has been shown against serial no.8. Vide Annexure-2 dated 27.10.1977 the applicant, who was Museum Attendant, Archaeological Museum at Konark, applied to the Superintending Archaeologist (Museums), Archaeological Survey of India, Museum Branch, Calcutta, to relieve him for joining in his post as Lower Division Clerk. He also sent a representation to the Director-General, Archaeological Survey of India, New Delhi, on 2.11.1977 seeking his relief. This is at Annexure-3. Ultimately on 23.1.1978 vide Annexure-4 the applicant was given a posting at Aurangabad under Superintending Archaeologist, S.W.Circle, Aurangabad, where he joined on 10.3.1978. A seniority list of Lower Division Clerks as on 1.9.1994 was

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 circulated vide Annexure-7 in which his seniority, according to the applicant, was fixed taking into account his date of joining as 10.3.1978. Applicant's case is that his seniority should have been fixed on the basis of his position in the departmental competitive examination and not on the basis of the date of his joining and thus an injustice has been caused to him by pushing down his position in the seniority list. Respondent nos.4 to 13 are Lower Division Clerks who, according to the applicant, are junior to him. It is further submitted by the applicant that even though he has represented on several occasions to give him rightful place in the seniority list, his representation was not attended to for long time and was ultimately rejected in order dated 19.5.1995, vide Annexure-11. According to the applicant, the respondents are proposing to fill up 34 posts of Upper Division Clerks. According to the incorrect seniority list he has been shown against serial no.37 whereas the correct serial for him is serial no.27. He apprehends that because of wrong fixation of his position in the seniority list, he would be deprived of promotion to the post of Upper Division Clerk.

3. Respondents in their counter have admitted that the applicant after passing the departmental competitive examination was promoted to the post of Lower Division Clerk in order dated 17.10.1977 and was posted to Museum Branch, Calcutta. They have contested the applicant's assertion that he was not relieved in time. The respondents have also stated that for want of availability of post of Lower Division Clerk in Museum Branch, Calcutta, the applicant could not be adjusted against that post and therefore, in order dated 23.1.1978 (Annexure-4) he was posted to Aurangabad.

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The respondents have stated that the seniority of the applicant has been rightly fixed and he has been shown in his appropriate place at serial no.37 in the seniority list. It is further asserted that as no person junior to him has been appointed to the post of Upper Division Clerk, the applicant has no legitimate grievance.

4. From the above recital of facts, it is clear that the applicant was appointed as a Lower Division Clerk on the basis of the result in the departmental competitive examination and his seniority in the post of Lower Division Clerk will be determined according to his position in the said competitive examination. The date of his joining in the post of Lower Division Clerk is irrelevant, moreso because it is clear from Annexures 2 and 3 that the petitioner did ask for being relieved immediately after getting the order of promotion. In their counter the respondents have admitted that the petitioner could not be accommodated at Calcutta because there was no post of Lower Division Clerk there. In that case he should not have been given the posting. Moreover, it is seen from the order dated 17.10.1977 that Chote Lal Yadav, whose name appears against serial no.8 in the order, was posted to Museum Branch, Calcutta and therefore, it would not be correct to hold that no post of Lower Division Clerk was there. In any case, the respondents ultimately posted the applicant to Aurangabad vide Annexure-4 and in compliance with the above order, the applicant joined at Aurangabad on 10.3.1978. Thus the delay in applicant's joining is attributable entirely to the respondents and he cannot be made to suffer on that count. The applicant's seniority will have to be fixed on the basis of his position in the list of successful candidates in the departmental competitive examination. The question, therefore, arises if this has actually been done.

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5. The claim of the applicant is that he has been shown against serial no.5 in the order dated 17.10.1977 whereas Chota Lal Yadav's name appears against serial no.8. From Annexure-1 it does not appear that the names of eight persons in the list are in order of their position in the departmental competitive examination.

On the contrary, the name of Tara Chand appearing against serial no.4, who is respondent no.12 in this petition, seems to show that the names in Annexure-1 are not arranged according to their position in the list of successful candidates in the departmental competitive examination. This is because in this order dated 17.10.1977 name of Tara Chand appears against serial no.4 above the applicant who in this petition has claimed seniority above Tara Chand. The respondents in their counter have specifically asserted that the seniority of the applicant has been fixed in accordance with the result of the departmental competitive examination and his seniority has been duly protected as per merit.

6. From the above, it appears that on the question whether the seniority of the applicant should be fixed according to the result of the departmental competitive examination and the position of the applicant in the list of successful candidates in that examination, there is no dispute between the parties. The answer is obviously in the affirmative. Therefore, it is ordered that the respondents should fix the seniority of the applicant in the rank of Lower Division Clerk strictly in accordance with his position in the list of successful candidates in the departmental competitive examination and he should be shown senior to all those who have been placed below him in the list of successful candidates. The respondents are directed to do so, if this has not already been done.

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7. As regards the prayer of the applicant for promotion to the post of Upper Division Clerk, it is ordered that in case the seniority of the applicant in the rank of Lower Division Clerk undergoes any change in compliance with the order above and in case any of his juniors has been promoted to the post of Upper Division Clerk in the meantime, then the case of the applicant should be considered for promotion from the date his junior was promoted. It is necessary to note here that the entire dispute is about fixation of seniority in the rank of Lower Division Clerk, but the applicant in paragraph 8 of his petition has by mistake mentioned about the reckoning of his seniority in the rank of Upper Division Clerk from 17.10.1977. His seniority cannot be fixed even in the rank of Lower Division Clerk from 17.10.1977. It has to be fixed as earlier mentioned according to his position in the list of successful candidates in the departmental competitive examination.

8. In the result, therefore, the Original Application is disposed of in terms of observations in paragraphs 6 and 7 above. In case the position of the applicant requires to be changed in terms of the above order, then the same should be done and the applicant intimated within a period of 3 (three) months from the date of receipt of copy of this order by the respondents. There shall be no order as to costs.

Lakshmi

(. SMT. LAKSHMI SWAMINATHAN)  
MEMBER (JUDICIAL)

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(S. SOM)  
VICE-CHAIRMAN 12.5.97